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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC ANDERSON

Appeal 2009-004041
Application 10/600,601
Technology Center 2100

Decided: February 16, 2010

Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and THU A.
DANG, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellant appeals the Examiner's final rejection of claims 1-15, 17-22, 24-27, and 29-34 under 35 U.S.C. § 134(a) (2002). Claims 16, 23, and 28 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We affirm.

A. INVENTION

According to Appellant, the invention relates generally to migrating between storage system designs (Spec. 1, ll. 4-5).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A method for performing adaptive migration and execution, the method comprising:
 - obtaining a plan generated by a planner executable in a computer;
 - adapting the plan to satisfy migration constraints;
 - executing at least one move of a data chunk in the plan;
 - feeding back information relating to the execution of the at least one move to the planner; and
 - modifying the plan by the planner in response to the information.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Borowsky	US 6,381,619 B1	Apr. 30, 2002
		(filed Sep. 13, 1999)

Claims 1-15, 17-22, 24-27, and 29-34 stand rejected under 35 U.S.C. § 102(b) as anticipated by the teachings of Borowsky.

II. ISSUE

The issue is whether Appellant has shown that the Examiner erred in determining that Borowsky discloses “executing at least one move of a data chunk” and “feeding back information relating to the execution of the at least one move” (claim 1).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Borowsky

1. Borowsky discloses a computer data storage system with migration plan generator which includes a migration planner which provides for making terminal moves until no further terminal moves are possible, then making “shunt” moves, or non-terminal moves, until further terminal moves can be made (col. 2, ll. 21-26).
2. The migration planner is a program, wherein if a terminal move is possible, the program proceeds to the “constraint met?” decision block 138, the “constraint met?” decision block then receives the set of constraints 114 to determine whether or not the constraints have been met, and if they have not been met, the program returns to the “build plan” block 132 (col. 5, ll. 12-36; Fig. 5).
3. The ultimate goal in Borowsky is a data storage system which is not only able to automatically configure itself but to reconfigure itself

‘on-the-fly’; i.e. move stored data around based on changing access patterns (col. 2, ll. 1-4).

IV. PRINCIPLES OF LAW

35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999).

The *claims* measure the invention. *See SRI Int’l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

V. ANALYSIS

Claims 1-10, 12, 13, 30, and 31

Though Appellant admits that “Borwosky describes a migration planner to migrate a data system from an initial configuration to a goal configuration” (App. Br. 5), Appellant argues that “the migration plan is not executed by the migration planner 116” and thus the steps referenced by the Examiner “do not relate to *execution* of a move, but rather to building of a migration plan that indicates the selected moves” (App. Br. 6). In particular, Appellant contends that “there is absolutely no disclosure in Borowsky of *feeding back information relating to the execution of the at least one move (of a data chunk in the plan) to the planner, and modifying the plan by the planner in response to the feedback information*” (*Id.*).

The Examiner finds that “Borowsky teaches the data stores are moved, or migrated, among the storage devices under the direction of a control 28 such as a computer, processor, controller, etc” (Ans. 28) and Figure 5 of Borowsky “*teaches a feedback mechanism which send a feedback that goal configurations are not being met and to select another move*” (Ans. 29). Thus, according to the Examiner, “[t]his feedback information is relating to the execution of a move because when control 28 such as a computer/processor is making a move/executing, the constraints 138 ... are being checked which all related to the execution of the moves” (*Id.*).

Accordingly, the issue that we address on appeal is whether Borowsky discloses “executing at least one move of a data chunk” and “feeding back information relating to the execution of the at least one move” (claim 1).

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns*, 988 F.2d at 1184. Claim 1 simply does not place any limitation on what an “execution” means, includes or represents, other than that at least one move of data chunk is executed in the plan, and the information relation to the execution is fed back to the planner.

Borowsky discloses a computer data storage system with a migration planner for making terminal and non-terminal (shunt) moves (FF 1), wherein the data storage system is able to automatically configure and reconfigure itself ‘on-the-fly’ (FF 3). Thus, contrary to the Appellant’s assertion that Borowsky does not “relate to *execution* of a move, but rather to building of a migration plan that indicates the selected moves” (App. Br. 6), Borowsky clearly discloses “executing at least one move of a data chunk” as required in claim 1. That is, we find that an artisan skilled in the art would have understood that making the terminal and non-terminal moves by the migration planner in the computer data storage system having ‘on-the-fly’ automatic configuration/reconfiguration comprises execution of the moves.

Though Appellant also contends that Borowsky does not teach “*feeding back information relating to the execution of the at least one move*

(of a data chunk in the plan) to the planner, and modifying the plan by the planner in response to the feedback information” (App. Br. 6), we agree with the Examiner’s finding that Figure 5 of Borowsky “teaches a feedback mechanism which send[s] a feedback that goal configurations are not being met and to select another move” (Ans. 29). In particular, Borowsky’s migration planner is a program which receives the set of constraints to determine whether or not the constraints have been met, and if they have not been met, a feedback is sent to select another move (FF 2).

Thus, we agree with the Examiner that “[t]his feedback information is relating to the execution of a move because when control 28 such as a computer/processor is making a move/executing, the constraints 138 ... are being checked which all related to the execution of the moves” (Ans. 29).

Appellant provides no argument to dispute that the Examiner has correctly shown where this claimed element appears in Borowsky. Thus, Appellant has not shown that the Examiner erred in finding that Borowsky teaches this claim feature.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting independent claim 1 and claims 2-10, 12, 13, 30, and 31 depending therefrom and falling therewith under 35 U.S.C. § 102(b).

Claims 14, 32, and 33

Regarding independent claim 14, Appellant similarly contend that “when building the plan according to Fig. 5 of Borowsky, there is no ‘feedback configuration information regarding *in-progress execution* of the

at least one move' of a data chunk in the plan, since the plan has not yet been executed" (App. Br. 7). However, as discussed above, we agree with the Examiner that Borowsky discloses such teachings. That is, we find that the making of the terminal and non-terminal moves by the migration planner in the computer data storage system having 'on-the-fly' automatic configuration/reconfiguration comprises execution of the moves. In particular, we agree with the Examiner that Borowsky's feedback information for reconfiguration "*is relating to the execution of a move because when control 28 such as a computer/processor is making a move/executing, the constraints 138 ... are being checked which all related to the execution of the moves*" (Ans. 29).

Appellant provides no argument to dispute that the Examiner has correctly shown where this claimed element appears in Borowsky. Thus, Appellant has not shown that the Examiner erred in finding that Borowsky teaches this claim feature.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting independent claim 14, and claims 32 and 33 depending therefrom and falling therewith, under 35 U.S.C. § 102(b).

Claims 15, 17-22, and 24-27

Similarly, regarding independent claim 15, Appellant contends that "Borowsky clearly does not disclose a planner that is able to generate a configuration plan based upon *configuration information* that relates to *execution of a move*" (App. Br. 8). However, as discussed above, we find

Borowsky's making of the terminal and non-terminal moves comprises execution of the moves, and agree with the Examiner that Borowsky's reconfiguration "*is relating to the execution of a move because when control 28 such as a computer/processor is making a move/executing, the constraints 138 ... are being checked which all related to the execution of the moves*" (Ans. 29).

Appellant provides no argument to dispute that the Examiner has correctly shown where this claimed element appears in the Borowsky. Thus, Appellant has not shown that the Examiner erred in finding that Borowsky teaches this claim feature.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting independent claim 15, and claims 17-22 and 24-27 depending therefrom and falling therewith, under 35 U.S.C. § 102(b).

Claim 11

As to claim 11 depending from claim 10, Appellant adds the contention that "the cited passage of Borowsky does not disclose *determining if an executor is available*" (App. Br. 9). However, the Examiner finds that Borowsky discloses such teachings, wherein "the program processes/executes all the possible moves and the executor has to be available to execute the moves" (Ans. 13). Other than citing the claim language (App. Br. 9), Appellant provides no convincing argument to dispute that the Examiner has correctly shown where the claimed elements appear in Borowsky.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 11 under 35 U.S.C. § 102(b).

Claim 29

As to claim 29 depending from claim 1, Appellant repeats the contention that “Fig. 5 of Borowsky relates to building a migration plan, not to execution of the steps of the migration plan” (App. Br. 9). However, as discussed above, we agree with the Examiner and find that Borowsky discloses such execution of the migration plan. We find that the Appellant has also not shown that the Examiner erred in rejecting claim 29 under 35 U.S.C. § 102(b).

VI. CONCLUSIONS

(1) Appellant has not shown that the Examiner erred in finding that claims 1-15, 17-22, 24-27, and 29-34 are anticipated by the teachings of Borowsky.

(2) Claims 1-15, 17-22, 24-27, and 29-34 are not patentable over the prior art of record.

VII. DECISION

We affirm the Examiner's decision rejecting claims 1-15, 17-22, 24-27, and 29-34 under 35 U.S.C. § 102(b).

Appeal 2009-004041
Application 10/600,601

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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